

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

(67)

SPJGV
CM 253195

18 MAY 1944

UNITED STATES)

v.)

Private ROBERT DAVIDSON
(32521838), 823rd
Amphibian Truck Company.)

FOURTH SERVICE COMMAND

ARMY SERVICE FORCES

Trial by G.C.M., convened at
Camp Gordon Johnston, Florida,
20 March 1944. To be shot to
death with musketry.

OPINION of the BOARD OF REVIEW
TAPPY, KIDNER and HARWOOD, Judge Advocates

1. The record of trial in the case of the soldier named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. Accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 92nd Article of War.

Specification: In that Private Robert Davidson, 823rd Amphibian Truck Company, did, at Camp Gordon Johnston, Florida, on or about 1 March 1944, with malice aforethought, willfully, deliberately, feloniously, unlawfully, and with premeditation kill one Melvin McClellon, a human being, by shooting him with a Carbine.

He pleaded not guilty to and was found guilty of the Charge and Specification. Evidence of one previous conviction for the use of crooked dice with intent to cheat, in violation of the 96th Article of War was introduced. He was sentenced to be shot to death with musketry. The reviewing authority approved the sentence and forwarded the record of trial for action under the 48th Article of War.

3. Summary of evidence:

On the night of 1 March 1944 the 823rd Amphibian Truck Company, of which accused was a member, had bivouaced on Dog Island, near Camp Gordon Johnston, Florida. In the area where their tents had been pitched,

several soldiers, including Corporal Gregory Fair, Privates Melvin McClellon, John Portgee, William Chavis, Robert Dunlap, and accused, were engaged in a dice game, commonly known as "craps". A blanket had been spread upon the ground on which to roll the dice. A fire was burning nearby and in addition flashlights were being used to better see the spots on the dice. Corporal Fair's turn came to roll the dice and Private McClellon bet three dollars that Fair would make his point. Private Portgee offered to cover the bet but accused told Portgee to take his money back and that he (accused) had the three dollar bet covered, although he did not put his three dollars down on the blanket. Private McClellon won the bet and an argument ensued between him and accused. Each stood up and McClellon clinched his fist, but did not otherwise threaten accused. There is evidence that McClellon said to accused, "This is the last time you will fuck with my money" (R. 24) * * * "Don't mess with my money" * * * "If you mess with my money I will knock your teeth out" (R. 44, 47). McClellon made no motion to strike accused and did not advance toward him. Accused said, "We'll see about that" or words to that effect and walked away (R. 24). McClellon returned to the dice game. Accused went to his tent where he obtained his carbine rifle (R. 50) and returned to the scene of the game. He was gone from five to ten minutes. As he walked up to where the dice game was in progress, accused said, "Where's McClellon" * * * "What's that you say you are going to do to me" (R. 25, 33, 34, 45), or words to that effect. McClellon stood up and then started backing away from accused. Accused had the carbine in his hands and Private Dunlap told accused to put the gun down (R. 25). When McClellon had retreated a distance of about nine feet accused shot him in the stomach. McClellon cried out, "Lord, he shot me, somebody help me" (R. 34). Accused returned to his tent, left his carbine there and then reported to the first sergeant (R. 54-57). Accused was cool and collected throughout the entire episode.

The shooting took place about 10:30 o'clock at night, but due to unavoidable difficulty in water transportation from Dog Island, where the incident took place, the deceased, McClellon, did not reach the hospital at Camp Gordon Johnston until about 4:30 o'clock on the morning of 2 March 1944. He was immediately treated for shock with blood plasma and transfusions. He was operated upon about 7 o'clock that morning, and died about 1:30 o'clock that afternoon as a result of gunshot wounds inflicted by accused. Major Richard V. Fletcher, M.C., who operated on deceased, stated that, in his opinion, the wound was made by a bullet which caused severe damage to the large and small intestine accompanied by extensive hemorrhage. The victim was in severe pain. The operation was not performed until 0700 hours although the victim reached

the hospital at 0430 hours, because he had to be strengthened for the operation by blood transfusions. The wound was "the natural, probable cause of the death" (R. 16). This witness testified that if the victim had "been in the hospital for adequate treatment within a short period of time, within an hour to two hours, his chances of survival would have been slightly greater", but "with the injuries that this man had the chances of survival are very slim" (R. 60).

4. After having his rights fully explained, accused elected to make a sworn statement, substantially as follows:

On the night of 1 March 1944, accused and four or five soldiers were playing "a little game" on a blanket which had been spread on the ground. When it came Gregory Fair's turn to roll the dice, McClellon said "three dollars he lose" and put three dollars down. Portgee picked up his money and said that accused had the bet with McClellon. Accused had said, "It's no bet" and had not put his money down, but after Fair had made his point, McClellon wanted to know where his (accused's) money was. An argument followed. McClellon got up, put his hand in his pocket and accused thought McClellon was going to pull a knife from his pocket. Accused knew that McClellon kept a knife in his "right hand pocket". McClellon said, "I am not going to tell you about fucking with my money again. I will kill one of you sons of bitches yet". Accused said, "Do you mean me, McClellon?" and McClellon said, "Yes", and started walking toward accused. Accused backed away, went to his tent and got his carbine. He does not know why he got the carbine. He imagines he was angry and did not know that he was going at the time. He guesses he wanted to frighten McClellon. Accused stayed away from the scene of the game about five minutes and supposes he was angry during that time. When accused returned, McClellon started the argument again and "it seemed" that McClellon put his hand in his pocket again and walked a few steps toward accused. Accused said, "What was that you said you would do to me?" and walked up to McClellon, raising the gun as he did so. McClellon backed away and accused lost his head and shot McClellon. Before he fired the shot accused does not recall anyone interfering with him or Dunlap saying, "Put that gun down". After firing the shot, accused went to his tent and then reported to the lieutenant, saying he had shot McClellon. Accused had been threatened by McClellon when an argument arose in a dice game sometime before this night. Accused did not get his carbine with the idea of killing McClellon nor did he intend to kill him when he fired the shot. Accused got the round of ammunition he used from a man in Tallahassee. He is not the type of person who shows any excitement. On cross-examination accused stated that McClellon

did not "exactly" raise his hand at him "but you can mostly tell when anyone gets ready to strike you". McClellon did not "grab" accused. When accused left the game he intended to go to his tent and get his carbine. While he does not remember clearly inserting the shell, he must have put it in the carbine. When he returned to the scene of the game, McClellon said, "What are you doing coming up behind me?" and that is all accused remembers. After the shooting he told Lieutenant Goldstein, "I was carrying the carbine by my right side so nobody could see it except those standing at my side" (R. 61-70).

5. The facts established by the clear and consistent evidence of the prosecution make out a strong case of murder, and these facts are not, in any material particular, in conflict with those related by accused. The accused failed to establish any justification for his willful and apparently premeditated act and the court was clearly justified in finding that every element of first degree murder was present.

6. Accused is 27 years of age and was inducted 6 October 1942 for the duration and six months. He has one previous conviction for wrongful use of crooked dice with intent to cheat, in violation of the 96th Article of War, adjudged on 13 August 1943.

7. The court was legally constituted and had jurisdiction of the person and offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. A sentence of death or life imprisonment is mandatory upon conviction of murder in violation of the 92nd Article of War.

Thomas M. Jappy, Judge Advocate.

Walter M. Tidner, Judge Advocate.

Robert B. Harwood, Judge Advocate.

SPJGV-CM 253195

1st Ind

Hq ASF, JAGO, Washington 25, D. C. 12 JUN 1945

TO: The Secretary of War

1. Herewith transmitted for the action of the President are the record of trial and the opinion of the Board of Review in the case of Private Robert Davidson (32521838), 823d Amphibian Truck Company.

2. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Accused murdered a fellow soldier by deliberately and without warning shooting him in the stomach with a .30 caliber carbine rifle. I find no extenuating or mitigating circumstances to warrant clemency and accordingly recommend that the sentence be confirmed and carried into execution.

3. Inclosed are a draft of a letter for your signature transmitting the record to the President for his action, and a form of Executive action designed to carry into effect the recommendation hereinabove made, should it meet with approval.

Myron C. Cramer

3 Incls

1. Record of trial

2. Dft ltr for sig S/W

3. Form of action

MYRON C. CRAMER

Major General

The Judge Advocate General

(Sentence confirmed. G.C.M.O. 338, 20 Jul 1945)